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Before The
Federal Communications Commission
Washington D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	MM Docket No. 00-10 ✓
Establishment of a Class A)	MM Docket No. 99-292
Television Service)	RM-9260

To: The Commission

REPLY COMMENTS OF KM BROADCASTING, INC.

KM Broadcasting, Inc. ("KMB"), licensee of Low Power Television Station WXOB-LP, Channel 14, Richmond, Virginia, and W60BR, Chesapeake, Virginia, hereby submits its Reply Comments with respect to the above-referenced proceeding.¹ Specifically, KMB submits its reply comments with respect to the previously-filed comments concerning the Federal Communications Commission's ("FCC" or "Commission") proposal to establish a Class A television service for the Low Power Television ("LPTV") Service based on the provisions of recently-enacted Federal legislation requiring the adoption of Class A television rules.² KMB is concerned that neither the FCC in the Order and Notice of Proposed Rulemaking (FCC 00-16,

¹ KMB filed Comments in this proceeding on February 10, 2000.

² See the Community Broadcasters Protection Act of 1999 ("CBPA"), Section 5008 of Pub. L.. No. 106-113, 113 Stat. 1501 (1999), Appendix I, codified at 47 U.S.C. §336(f).

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released January 13, 2000) ("NPRM") nor the Commentors in this proceeding have put forth a proposal that clearly defines programming that is produced within the local market area, i.e., "locally produced" programming. Since this is a crucial element of the qualification for Class A status, KMB will address that deficiency in these Reply Comments. In support whereof, the following is submitted.

I. The FCC Should Adopt a Clear Definition of "Locally-Produced"

KMB urges that the FCC must adopt a clear definition of locally-produced programming as used in the Class A legislation (CBPA. Without a definition provided by this proceeding, LPTV operators will be required to comply with Class A rules without the administrative certainty required by due process of law and the Commission's own case precedent.

II. Congress Has Provided The Necessary Definition

Section (f)(2) of the CBPA provides as follows:

(2) QUALIFYING LOW-POWER TELEVISION STATIONS- For purposes of this subsection, a station is a qualifying low-power television station if--

^(A)(i) during the 90 days preceding the date of enactment of the Community Broadcasters Protection Act of 1999--

^(I) such station broadcast a minimum of 18 hours per day;

^(II) such station broadcast an average of

at least 3 hours per week of programming that was produced within the market area served by such station, or the market area served by a group of commonly controlled

low-power stations that carry common local programming produced within the market area served by such group; and

^(III) such station was in compliance with the Commission's requirements applicable to low-power television stations; and

^(ii) from and after the date of its application for a class A license, the station is in compliance with the Commission's operating rules for full-power television stations... (Emphasis supplied.)

The language in the CBPA itself provides no definition of locally-produced programming, nor does it provide any direction. However, the Conference Report accompanying this legislation remedies this void and speaks clearly to this issue. The Conference Report states

Paragraph (2) lists the criteria an LPTV station must meet to qualify for a Class A license. Specifically, the LPTV station must: during the 90 days preceding the date of enactment, broadcast a minimum of 18 hours per day-- including at least 3 hours per week of locally-originated programming--and also be in compliance with the FCC's rules on low-power television service; and from and after the date of its application for a Class A license, be in compliance with the FCC's rules for full-service television stations. (Emphasis supplied.)

This use of the specific term "locally-originated" to define the type of programming necessary to qualify for Class A status is no mistake nor is it an example of imprecise

drafting on the part of the legislative drafters. KMB's conclusion is based on the fact that there is no mention whatsoever of programming that is locally "produced" in the Conference Report accompanying the legislation. On the other hand, in every instance where programming is referenced in this context in the legislative history, only term "locally originated" is used.

For example, the Conference Report states

Low-power television plays a valuable, albeit modest, role in this market because it is capable of providing locally-originated programming to rural and urban communities that have either no access to local programming, or an over-abundance of national programming. (Emphasis supplied.)

In addition, the Conference Report states

The House Committee on Commerce's record in considering this legislation reflects that there are a significant number of LPTV stations which broadcast programming--including locally originated programming--for a substantial portion of each day. From the consumers' perspective, these stations provide video programming that is functionally equivalent to the programming they view on full-service stations, as well as national and local cable networks. Consequently, these stations should be afforded roughly similar regulatory status. (Emphasis supplied.)

It is clear from the foregoing that Congress intended those stations with three hours of locally-originated programming per week to qualify for Class A status.

III. The FCC Rules Also Contain a Definition of Local Origination

The term "locally originated" is not a vague phrase of indeterminate or ambiguous meaning. Rather, it is a term of art contained in the Commission's rules at 47 CFR §74.701.

The definition in §74.701 provides that

(g) **Program origination.** For purposes of this part, **program origination** shall be any transmissions other than the simultaneous retransmission of the programs and signals of a TV broadcast station. **Origination** shall include locally generated television program signals and program signals obtained via video recordings (tapes and discs), microwave, common carrier circuits, or other sources. (h) **Local origination.** Program origination if the parameters of the program source signal, as it reaches the transmitter site, are under the control of the low power TV station licensee. Transmission of TV program signals generated at the transmitter site constitutes **local origination**. **Local origination** also includes transmission of programs reaching the transmitter site via TV STL stations, but does not include transmission of signals obtained from either terrestrial or satellite microwave feeds or low power TV stations.

Since this term of art is incorporated directly into the CBPA through the legislative history, and it is already found in the Commission's rules, it must be adopted as the definition here.

IV. Well-Established Principles of Legislative Interpretation Are Controlling Here

It is a well-established principle of legislative

interpretation that an agency administering a statute must give effect to the unambiguously expressed intent of Congress. *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984). In this case, Congress has spoken clearly and unambiguously on the issue of locally-produced programming. There is no gap in the Congressional intent requiring agency interpretation on this issue. Consequently, the FCC is constrained by well-established case precedent, including clearly-defined principles established by the Supreme Court, in this area and must adopt the definition provided in the CBPA by Congress establishing the type of programming necessary to establish Class A status for LPTV licensees.

WHEREFORE, the foregoing premises considered, KMB respectfully requests that Commission incorporate the foregoing reply comments of KMB into any regulations

formulated to govern Class A LPTV licenses, when such rules are adopted.

Respectfully submitted,
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Dated: February 22, 2000